

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA, Case No. 1:16-cr-00224-PAG-3  
Cleveland, Ohio  
Plaintiff, Wednesday, November 7, 2018  
11:45 a.m.  
vs.

RADU MICLAUS,  
Defendant.

TRANSCRIPT OF FINAL PRETRIAL PROCEEDINGS  
BEFORE THE HONORABLE PATRICIA A. GAUGHAN,  
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: Duncan T. Brown  
Assistant United States Attorney  
801 West Superior Avenue  
400 U.S. Court House  
Cleveland, Ohio 44113  
216-622-3600

For the Defendant: Michael J. O'Shea  
Lipson O'Shea  
110 Hoyt Block Bldg.  
700 West St. Clair Avenue  
Cleveland, Ohio 44113  
216-241-0011

Official Court Reporter: Heidi Blueskye Geizer,  
Certified Realtime Reporter  
United States District Court  
801 West Superior Avenue  
Cleveland, Ohio 44113  
216-357-7092

Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

1 MORNING SESSION, WEDNESDAY, NOVEMBER 7, 2018 11:45 A.M.

2 (Call to order of the Court.)

3 THE COURT: We are here in the matter of the  
4 United States of America versus Radu Miclaus, Case Number  
5 16-cr-224.

6 Present in court is Mr. Miclaus. Is that correct,  
7 sir?

8 THE DEFENDANT: Yes.

9 THE COURT: And did I pronounce your name  
10 correctly?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Represented by his attorney,  
13 Mr. Michael O'Shea.

14 MR. O'SHEA: Good morning, Your Honor.

15 THE COURT: Good morning.

16 On behalf of the government, Mr. Duncan Brown.

17 MR. BROWN: Good morning, Your Honor.

18 THE COURT: Good morning.

19 Mr. Miclaus, we are here today for purposes of a final  
20 pretrial. As you are aware, trial is set Monday, I believe  
21 it's November 26th. And so you know, I have been in  
22 chambers with counsel discussing all of the technical issues  
23 that relate to proceeding to trial.

24 However, it's my obligation to make certain you  
25 understand all the risks you are taking here, the risks of

1 going to trial and being found guilty, and the risk of  
2 pleading guilty. I must get all of this on the record. I  
3 must make certain that you understand all of the risks.

4 I will tell you, Mr. Miclaus, I don't care what you  
5 do. I don't care if you go to trial, I don't care if you  
6 plead guilty. What I do care about is that you understand  
7 everything so you can make an intelligent decision as to  
8 which path to take, trial or plea of guilty.

9 I'm going to call on Mr. Brown, and I'm going to have  
10 him put on the record what you are facing if you go to trial  
11 and you are found guilty. I'm also going to have him put on  
12 the record any plea negotiations, and the last plea offer  
13 that is on the table.

14 Please listen carefully, because after he speaks, I am  
15 going to ask you some questions.

16 Fair enough?

17 THE DEFENDANT: Yes.

18 MR. BROWN: Thank you, Your Honor. And these  
19 numbers that I am going to go through are not the statutory  
20 maximums, because those have been on the record. These  
21 would be what the government anticipates arguing for after  
22 trial based on the --

23 THE COURT: Sentencing guidelines.

24 MR. BROWN: Correct.

25 THE COURT: Mr. Miclaus, let me stop

1 Mr. Brown. Are you familiar with the advisory sentencing  
2 guidelines?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: So you have discussed with  
5 Mr. O'Shea all of the factors I take into account when I  
6 sentence somebody, and that includes the sentencing  
7 guidelines, which are advisory in nature.

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: All right, fair enough.  
10 Go ahead, Mr. Brown.

11 MR. BROWN: Thank you, Your Honor.

12 Your Honor, the government calculates approximately  
13 that the adjusted base offense level for all of the counts  
14 of conviction would put the defendant at approximately a 38.  
15 And I am going to explain how we get to that, because that  
16 includes loss values of over \$3.5 million which would take  
17 him to that level also.

18 Increases for use of special skill, use of money  
19 laundering, sophisticated money laundering means, and also  
20 moving money overseas to evade detection. And also an  
21 aggravating role as a manager within the scheme of three  
22 levels.

23 Again, our calculations would put him in approximately  
24 a 38. We wouldn't anticipate any criminal history based on  
25 our investigation. So that would put him at approximately

1 235 months to 293 months, which is a level 38, like I said.

2 The one outstanding issue that we would argue is there  
3 are five aggravated identity theft counts. We anticipate  
4 based on witness testimony, we understand that it's common  
5 practice and the Court's practice when you have multiple  
6 aggravated identity thefts possibly not to stack all of them  
7 consecutively, so we would be asking the Court for no fewer  
8 than three to run consecutively, which would be six years.  
9 We believe based on the evidence and on the nature of the  
10 crime that would be appropriate.

11 So the government would anticipate based on the  
12 evidence we believe would be coming in, plus the relevant  
13 conduct, that we would be arguing at sentencing to be asking  
14 for a sentence somewhere between 22 to 28 years, Your Honor.

15 Currently the government has been in extensive and  
16 ongoing conversations with Mr. O'Shea. We talk on a pretty  
17 regular basis, not just about the status of the case, but  
18 also about potential resolutions. At one point in time we  
19 had talked about an offer of approximately eight years.

20 THE COURT: I'm sorry?

21 MR. BROWN: Of eight years, but since that  
22 time that offer has been rescinded, and that's the state of  
23 conversations right now. Both sides are getting ready for  
24 trial rather than --

25 THE COURT: So are you saying there is no plea

1 offer on the table?

2 MR. BROWN: Right now that offer of eight  
3 years has been rescinded. Again, Mr. O'Shea and I continue  
4 to talk, but there is no active plea offer from the  
5 government's point of view that we've extended or continued  
6 to extend.

7 THE COURT: Mr. Brown, let me ask you this.  
8 If Mr. Miclaus would want to accept that plea offer today,  
9 would you consider allowing him to do so?

10 MR. BROWN: Not eight years, Your Honor. The  
11 negotiations would have to reflect the fact that we've  
12 continued to prepare for trial, and we've made arrangements  
13 for witnesses to come in from all around the world for this  
14 trial, and also other change of circumstances in this case.

15 So the ability to plea is always open. The government  
16 will always take the phone call and always have that  
17 conversation with Mr. O'Shea. However, eight years would  
18 not be on the table, it would be something above eight  
19 years.

20 THE COURT: I see. So it was on the table, it  
21 was rejected.

22 MR. BROWN: That's correct.

23 THE COURT: And then the negotiations stopped.

24 MR. BROWN: Correct. But not as a reflection  
25 of a breakdown in communication, just in the natural

1 progression of the life of this case, Your Honor.

2 THE COURT: I understand. But you're not  
3 saying that you wouldn't be open to plea bargaining even  
4 though it is on a late date.

5 MR. BROWN: Recognizing the difficulty of all  
6 of those mechanics, the government is always welcome to  
7 those sorts of discussions. We would have those  
8 conversations with Mr. O'Shea, absolutely, on behalf of his  
9 client.

10 THE COURT: Mr. O'Shea.

11 MR. O'SHEA: That's fair, Judge.

12 THE COURT: Did everything Mr. Brown say or  
13 said accurate?

14 MR. O'SHEA: It is, Judge, including I should  
15 add, Judge, that some of the discussions were just to have  
16 Mr. Miclaus maybe plead guilty as charged open, and then  
17 just have, you know, a sentencing trial, which would really  
18 be what it might end up boiling down to at the end of the  
19 day.

20 But I've talked over these issues with my client, and  
21 I even -- just to be quite frank with the Court, and I said  
22 this to the government, even if you talked about your eight  
23 and if I pushed back with something less than that, maybe.

24 So this was a few months ago: If we're in jail now,  
25 Mr. Miclaus, and I've got you so you only did, for instance,

1 say three more years from today, and he said, no, I won't do  
2 that, so then I said to myself, my brain says, well, then  
3 why am I bothering at this point to even begin the  
4 negotiations.

5 And I think after talking with him today, he's where  
6 he was when I spoke to him a month ago.

7 THE COURT: And you did communicate that the  
8 government's position is looking at all of the advisory  
9 sentencing guidelines, he would be looking in the area of 22  
10 to 28 years if he is found guilty at trial.

11 MR. O'SHEA: I actually said 25 years. I cut  
12 it right down the middle. So he's aware it's north of 20.

13 THE COURT: All right, okay.

14 So now, Mr. Miclaus, I have to make sure, sir, that  
15 you understand everything. The government's lawyer believes  
16 that if you go to trial and you are found guilty of all of  
17 the counts that you would be looking at, using the advisory  
18 sentencing guidelines, you would be looking at in the area  
19 of 22 to 28 years.

20 I don't know if that's the case, and I wouldn't know  
21 until after I would refer your matter to the Probation  
22 Department for a presentence investigation report and I  
23 thoroughly reviewed the report, and listened to argument.  
24 Only then would I know where you would fall within the  
25 guideline range.



1 THE DEFENDANT: I understand.

2 THE COURT: But the government believes that  
3 you are looking at somewhere in the area of 22 to 28 years.  
4 Do you understand how the government came up with that  
5 range?

6 THE DEFENDANT: Yes, Your Honor, I understand.  
7 I understand.

8 THE COURT: All right. No questions of me?

9 THE DEFENDANT: No.

10 THE COURT: Okay. The government has  
11 indicated that you did in fact reject eight years, and so  
12 therefore that's no longer on the table, but Mr. Brown  
13 indicated he's still open to plea bargaining.

14 Do you have any interest in having plea bargain  
15 discussions with the government?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Okay. Have you communicated  
18 anything with your lawyer so your lawyer can communicate it  
19 with the government, or do you wish to do it on the record  
20 in open court?

21 THE DEFENDANT: I think --

22 MR. O'SHEA: One thing he just said to me, "If  
23 I pled and they let me go today, I'd do it."

24 THE COURT: I'm sorry, Mr. O'Shea --

25 MR. O'SHEA: I should stand.

1                   THE COURT: That's all right, I just didn't  
2 hear it all.

3                   MR. O'SHEA: That if -- one of the discussions  
4 that we had was -- I don't mean to laugh -- was that "If I  
5 pled, they'd have to let me go today. I'd have time served,  
6 and I'd be done."

7                   And that's the only thing that he would do.

8                   THE COURT: Oh, that's not --

9                   MR. BROWN: Your Honor, the government would  
10 not agree to that.

11                  THE COURT: That is not going to happen.

12                  MR. O'SHEA: I think that's what he was -- I  
13 think.

14                  THE COURT: I see. Is that what you meant?

15                  THE DEFENDANT: Not quite, but close. This  
16 was a discussion a year ago, so --

17                  THE COURT: Mr. Brown has made it quite clear  
18 that that would not be acceptable to the government. And  
19 Mr. Miclaus, I think the government has made it clear that  
20 they're looking in the area of eight years, and that was  
21 rejected, so it's no longer on the table. So I think you've  
22 got to be up in that range for the government to even  
23 consider it.

24                  THE DEFENDANT: I understand, Your Honor.

25                  THE COURT: Okay. Why don't you just

1 privately have a conversation with Mr. O'Shea, and I'll just  
2 wait.

3 Did you want to say something?

4 MR. BROWN: No, Your Honor. I was just  
5 standing to be polite.

6 THE COURT: I'm sorry?

7 MR. BROWN: I was just standing to be polite.

8 THE COURT: Oh, all right.

9 MR. O'SHEA: Just so I can ask, three or four  
10 years total, including time served.

11 MR. BROWN: No.

12 MR. O'SHEA: Okay.

13 THE COURT: Gentlemen, may I see you at  
14 side-bar, please?

15 MR. O'SHEA: Which side, Judge?

16 THE COURT: Over here. I'm sorry.

17 (Discussion had off the record at side-bar.)

18 (Proceedings in open court:)

19 THE COURT: Mr. Miclaus, Mr. Brown has made it  
20 very clear, the eight years is no longer on the table, and  
21 you are coming up with numbers that are below eight.  
22 Frankly, you'd have to come up with a number that's above  
23 eight, and how close to eight the government is willing to  
24 accept, I don't know. That's where your lawyer would have  
25 to talk to Mr. Brown.

1           But I want to be very realistic here. You are facing  
2           in the area of 22 to 28 years. The government would allow  
3           you to plead to something significantly lower than that, but  
4           it's not eight years. So it's somewhere between 8 years and  
5           22 years, basically.

6           So if you're not willing to negotiate in that range,  
7           then I just don't think -- I think you've made your decision  
8           then to go to trial. Is that fair?

9           THE DEFENDANT: Yes, Your Honor.

10          THE COURT: All right. So am I correct, you  
11          are not interested in the government considering anything  
12          between 8 years and 22 years?

13          THE DEFENDANT: Yes, Your Honor, that's  
14          correct. I am not considering it, anything from 8 to 22.

15          THE COURT: And you understand what you are  
16          facing --

17          THE DEFENDANT: Yes.

18          THE COURT: -- if you go to trial.

19          THE DEFENDANT: Yes, Your Honor, I understand.

20          THE COURT: Okay. Mr. O'Shea, I think I've  
21          done my duty.

22          MR. O'SHEA: Absolutely, Judge.

23          THE COURT: I think you're satisfied, your  
24          client totally understands the risks he's taking here.

25          MR. O'SHEA: I did before you climbed on the

1 bench, Judge, and I'm even more convinced now.

2 THE COURT: Okay. And you do understand, sir,  
3 that regardless, you're going to get credit for time served.

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: So no matter whether you go to  
6 trial and you're found guilty or whether you plead guilty to  
7 a significantly lower number, you would get credit for time  
8 served.

9 THE DEFENDANT: I understand.

10 THE COURT: Do you have any questions of me?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Do you have any questions of  
13 Mr. Brown? And he may choose not to answer them, but I'm  
14 going to give you the opportunity to ask.

15 THE DEFENDANT: No, Your Honor, no questions.

16 THE COURT: Okay. The jury will be here  
17 Monday morning, November 26th.

18 THE DEFENDANT: Thank you, Your Honor.

19 MR. O'SHEA: One last thing, Judge.

20 THE COURT: Sure.

21 MR. O'SHEA: I think the record should  
22 reflect, notwithstanding my client is from Romania, and as I  
23 think you can already tell, we don't need an interpreter for  
24 him. He has command of the English language. I think we  
25 ought to make that --

1 THE COURT: I can tell. Is that right,  
2 Mr. Miclaus?

3 THE DEFENDANT: Yes.

4 THE COURT: Yes, I agree with you.

5 MR. O'SHEA: Thank you.

6 THE COURT: All right. You're all set for  
7 today.

8 MR. O'SHEA: Thank you, Judge.

9 MR. BROWN: Thank you, Your Honor.

10 - - - - -

11 (Proceedings adjourned.)

12

13

14

15 C E R T I F I C A T E

16

17 I certify that the foregoing is a correct transcript  
18 from the record of proceedings in the above-entitled matter.

19

20 s/Heidi Blueskye Geizer January 22, 2020

21 Heidi Blueskye Geizer Date  
22 Official Court Reporter

23

24

25